

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Examiner : Maria Thein
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SUPPLEMENTAL REPLY TO ACTION OF DECEMBER 15, 2006

In reply to the Final Office Action of December 15, 2006, Applicant submits the following remarks.

Independent claims 90, 107, 120, and 136, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 137-153 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 6,553,113 ("Dhir") in view of U.S. Patent Number 6,665,644 ("Kanevsky").

As preliminary matter, Applicant notes that the Advisory Action fails to address the substance of the arguments that Applicant previously asserted to overcome the above rejection in Applicants' response to the Final Office Action. Instead, the Advisory Action rejects independent claims 90, 107, and 120 based on almost exactly the same reasoning that was previously set forth in the Final Office Action. Furthermore, the Advisory Action fails to address the new arguments presented with respect to independent claims 133-136. As such, Applicant is unable to glean from the Advisory Office Action any insight as to why the Examiner did not find the arguments previously submitted by Applicants convincing. In order to expeditiously advance prosecution and make a determination whether filing an appeal brief in this case is necessary, Applicant kindly requests that the Examiner addresses the merits of the following three arguments, which were previously raised in the Applicant's response to the Final Office Action. Applicant only wishes to use the appeal process in situations in which both the Applicant and the Examiner understand fully each others position but simply disagree. At this point, Applicant does not understand the Examiner's position with respect to the below

arguments and respectfully requests clarity so as to proceed with productive prosecution of this application.

1. Kanevsky fails to describe or suggest “storing in a first electronic database prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches” (emphasis added), as recited in claim 90 and similarly recited in claims 107 and 120.

Kanevsky describes an automated system that transfers to a supervisory person any users, who are detected by the system to be in a disgusted, contemptuous, fearful, or angry emotional state, who are detected to have a problem with the automated system, or who are detected to be vulnerable to a proposal to buy a given product or service. This is different from detecting users who have a preference not to receive any sales pitches *because* a preference of the caller not to receive any sales pitches necessarily requires that the caller choose or otherwise select not to receive any sales pitches. A mere inference that the caller may or may not wish to receive a sales pitch, as suggested by Kanevsky, is insufficient to meet this limitation.¹ This distinction is an important one as explained through detailed examples in Applicant's response to the Final Office Action. Applicant's response to the Final Office Action is reproduced below for the Examiner's convenience and ease of reference.

2. Dhir and Kanevsky, either alone or in the proposed combination, fail to describe or otherwise suggest “storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product” (emphasis added), as recited in claim 136.

Kanevsky simply teaches detection of a user who is vulnerable to a proposal to buy a given product or service without any further teaching or suggestion as to how this detection relates to a user sales pitch preference. This is *different* from detecting users who have a preference not to receive any sales pitches related to a provider of the first service or product. In

¹ Dictionary.com defines preference as the selection of someone or something over another. See www.dictionary.com. Merriam-Webster defines preference as the power or opportunity of choosing. See www.merriam-webster.com.

particular, even if this detection of user vulnerability could somehow be properly characterized as a sales pitch preference of the user, which Applicant does not concede, Kanevsky is silent as to whether this detection would be a basis to offer the user a particular sales pitch or not to offer the user a particular sales pitch. That is, it is not clear based on Kanevsky's teaching whether such detection would be used by Kanevsky's system to target the user with a sales pitch for the product or service to which the user is vulnerable and perhaps thereby increase the likelihood of a sale, or would instead be used not to target the user with such a sales pitch. In either case, Kanevsky, nevertheless, still fails to describe or suggest storing a sales pitch preference of a caller not to receive any sales pitches related to a provider of that product or service.

Furthermore, even if one were to assume *arguendo* that the detection of a user's vulnerability to a proposal to buy a given product or service could be properly characterized as a user preference not to receive a sales pitch related to that particular product or service, which Applicant does not concede, Kanevsky would, nevertheless, still fail to meet the above-stated feature because a preference to not receive a sales pitch related to a product or service is not the same as a preference to not receive any sales pitches related to a provider of that product or service. The distinction is an important one as explained through a detailed example in Applicant's response to the Final Office Action, reproduced below for the Examiner's convenience.

3. Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest at least "a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account" (emphasis added), as recited in claim 133.

The Final Office Action seems to acknowledge the shortcomings of Dhir and Kanevsky in this regard and instead relies on Szlam for teaching this feature. In particular, the Final Office Action asserts that Szlam teaches past misbehavior that includes the caller violating a terms of service agreement associated with the caller's account. Final Office Action, page 11, lines 11-13. Applicant submits that Szlam is equally deficient. Szlam teaches determining to route the

call to an agent or human operator based on whether or not the human operator has been placed on hold by a party and not based on whether the caller has acted illegally or has violated a term of service agreement.

For the Examiner's convenience and ease of reference, reproduced below (in indented format) is the Applicant's response to the Final Office Action.

Claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 133-150 are pending in this application, with claims 90, 107, 120 and 133-136 being independent.

Claim Rejections – 35 U.S.C. § 103

Independent claims 90, 107, 120, and 136, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 137-153 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 6,553,113 ("Dhir") in view of U.S. Patent Number 6,665,644 ("Kanevsky"). Independent claims 133-135 were rejected as being unpatentable over Dhir in view of Kanevsky, and in further view of U.S. Patent Number 5,511,112 ("Szlam"). The following remarks address the rejection of claims 90, 107, and 120 first, then address the rejection of claim 136, and lastly address the rejection of claims 133-135.

A. Rejection of independent claims 90, 107, and 120, and their dependent claims.

Independent claim 90 recites a process for assisting presentation of sales pitches appropriate for a particular telephone caller of a customer service call center. The process includes receiving and handling at a customer service call center an incoming service call from a caller seeking assistance and leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services. The leveraging includes identifying a caller identity or a first caller attribute related to the caller, storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. The leveraging also includes searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute, omitting to search a second electronic database of potential sales pitches for a sales pitch based upon at least the additional attribute of the caller, and routing the service call to a human operator.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 90 and its dependent claims because Dhir and Kanevsky, either alone or in combination, fail to describe or suggest at least "storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches" (emphasis added), as recited in claim 90.

The Final Office Action acknowledges that "Dhir does not disclose a preference of the caller not to receive any sales pitch." Final Office Action, page 3, lines 12-14. Instead, the Final Office Action relies on Kanevsky to show this feature. Applicant respectfully asserts that Kanevsky is equally deficient.

Kanevsky relates to a method for collecting data associated with the voice of a voice system user. Abstract. The system determines from the voice of the user whether the user is in a happy emotional state, or whether the user is in a fearful and angry emotional state, and the system provides the user with a different response depending on whether the user is in a happy or an angry emotional state. Col. 11, lines 49-53. Specifically, if the user is in a happy emotional state, the system offers to the user at least one of a product and a service. Col. 11, lines 53-55. Alternatively, if the user is in an angry emotional state, the system transfers the user from an IVR system to a human operator. As such, Kanevsky teaches a system that makes an inference, from the user's current emotional state, as to whether the user should be provided with a particular offer or instead transferred to a human operator. Accordingly, Kanevsky does not describe or suggest storing a caller's actual preference not to receive any sales pitches.

In response to the above-presented arguments, the Final Office Action asserts that Kanevsky describes an automated system that transfers to the supervisory person users who are in a disgusted, contemptuous, fearful, and angry emotional state or who have problem with the automated system. Final Office Action, page 13, lines 12-15. And, the Final Office Action concludes "detection of a user who has problem with the automated system and should be transferred to an operator and detection of [a user] who [is] angry at the service and should be transferred to a supervisory person are considered a preference of the caller no to receive any sales pitch." Final Office Action, page 13, lines 14-18. In other words, the Final Office Action seems to suggest that the user's projection of mood or difficulty dealing with the system operates as an indication of a preference for or against receiving an advertisement. Applicant disagrees.

Independent claim 90 expressly recites "storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches." Applicant submits that the preference of the caller not to receive any sales pitch necessarily requires that the caller choose or otherwise select not to receive any sales pitch. A mere inference that the caller may or may not wish to receive a sales pitch, as suggested by Kanevsky, is insufficient to meet this limitation.²

This distinction is important because Kanevsky's system is simply unable to satisfy a caller's actual sales pitch preferences. For example, an angry caller may still be interested in a sales pitch, and thus may have a preference to receive sales pitches, yet Kanevsky's system would not permit that caller to receive a sales pitch because the caller is detected as being angry. Similarly, a happy caller may not be interested in receiving any sales pitches, and thus may have a preference not to receive any sales pitches, yet Kanevsky's system would burden that caller with an undesired sales pitch simply because

² Dictionary.com defines preference as the selection of someone or something over another. See www.dictionary.com. Merriam-Webster defines preference as the power or opportunity of choosing. See www.merriam-webster.com.

the system detected the caller as being happy. Similarly, a caller who is having problem with the automated system may very well wish to receive sales pitch preferences while figuring the system out. In sum, Kanevsky's system detects and stores moods of a caller and presents or does not present sales pitches based on the detected moods. Kanevsky's system, however, does not store caller sales pitch preferences, much less a caller sales pitch preference not to receive any sales pitches.

Accordingly, Kanevsky fails to describe or suggest "storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches" (emphasis added), as recited in claim 90. For at least the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 90, along with its dependent claims.

Independent claim 107 recites a system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The system includes, among other features, "a first electronic database configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches." As such, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 107, along with its dependent claims, for at least the reasons presented above with respect to claim 90.

Independent claim 120 recites a computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The computer program includes, among other features, "a first database code segment configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches." As such, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 120, along with its dependent claims, for at least the reasons presented above with respect to claim 90.

B. Rejection of independent claim 136, and its dependent claims.

Independent claim 136 recites a process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center. The process includes receiving and handling, at a customer service call center, an incoming service call from a caller seeking assistance and leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services. The leveraging includes identifying a caller identity or a first caller attribute related to the caller, storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller. The sales pitch preference includes a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product. The leveraging also includes searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity and the first caller attribute, searching,

based upon at least the additional attribute of the caller, a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product, routing the service call to a human operator for presentation of the first sales pitch to the caller, and assisting the human operator in presenting the first sales pitch to the caller.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 136 because Dhir and Kanevsky, either alone or in combination, fail to describe or suggest at least "storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product" (emphasis added), as recited in claim 136.

The Final Office Action seems to acknowledge that Dhir fails to describe or suggest the above-recited feature and relies on Kanevsky for such teachings. In particular, The Final Office Action relies on, among other sections, column 7, lines 46-54, of Kanevsky to show the above-recited feature. Final Office Action, page 7, line 18. In column 7, lines 46-54, however, Kanevsky teaches "[b]usiness objectives can include, for example, detection of users who are vulnerable to a proposal to buy a given product or service, detection of users who have problems with the automated system and should be transferred to an operator and detection of users who are angry at the service and should be transferred to a supervisory person" (emphasis added). Here, Kanevsky simply teaches detection of a user who is vulnerable to a proposal to buy a given product or service without any further teaching or suggestion as to how this detection relates to a user sales pitch preference. Even if this detection of user vulnerability could somehow be properly characterized as a sales pitch preference of the user, which Applicant does not concede, Kanevsky is silent as to whether this detection would be a basis to offer the user a particular sales pitch or not to offer the user a particular sales pitch. That is, it is not clear based on Kanevsky's teaching whether such detection would be used by Kanevsky's system to target the user with a sales pitch for the product or service to which the user is vulnerable and perhaps thereby increase the likelihood of a sale, or would instead be used not to target the user with such a sales pitch. In either case, Kanevsky, nevertheless, still fails to describe or suggest storing a sales pitch preference of a caller not to receive any sales pitches related to a provider of that product or service.

In particular, even if one were to assume *arguendo* that the detection of a user's vulnerability to a proposal to buy a given product or service could be properly characterized as a user preference not to receive a sales pitch related to that particular product or service, which Applicant does not concede, Kanevsky would, nevertheless, still fail to meet the above-stated feature because a preference to not receive a sales pitch related to a product or service is not the same as a preference to not receive any sales pitches related to a provider of that product or service. This distinction is perhaps best illustrated with an example. Kanevsky's system may detect that a user is vulnerable to alcohol and, therefore, Kanevsky's system, under the above assumptions, may decide not to present the user with any sales pitches offering alcoholic beverages from a provider. Kanevsky's system, however, would still present the user with sales pitches from that

same provider if the provider offers other kinds of beverages or other kinds of products or services in addition to alcoholic beverages. Put simply, as long as the provider offers other kinds of products or services in addition to alcoholic beverages, the provider can still target the user with sales pitches related to those other kinds of products or services. In contrast, in claim 136, after the user expresses a desire not to receive any sales pitch from a provider of a service or product, the user will not receive any sales pitches whatsoever from any provider that provides that product or service, irrespective of the other kinds of product or services offered by the provider.

Accordingly, Dhir and Kanevsky, either alone or in the proposed combination, fail to describe or otherwise suggest "storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product" (emphasis added), as recited in claim 136.

For at least the forgoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 136, along with its dependent claims.

C. Rejection of independent claims 133-135, and their dependent claims.

Independent claim 133 recites a process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center. The process includes receiving and handling at a customer service call center an incoming service call from a caller seeking assistance and leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services. The leveraging includes identifying a caller identity or a first caller attribute related to the caller, storing in a first electronic database, prior to the receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller, searching the first electronic database to identify the information indicative of past misbehavior based on at least one of the caller identity or the first caller attribute. The leveraging also includes omitting to search the second electronic database for a potential sales pitch based on the identified information indicative of past misbehavior. The identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account. The leveraging also includes routing the service call to a human operator based on the identified information indicative of past misbehavior and assisting the human operator to take the service call based on the identified information indicative of past misbehavior.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 133 because Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest at least "a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service

agreement associated with the caller's account" (emphasis added), as recited in claim 133.

The Final Office Action seems to acknowledge the shortcomings of Dhir and Kanevsky in this regard and instead relies on Szlam for teaching this feature. In particular, the Final Office Action asserts that Szlam teaches past misbehavior that includes the caller violating a terms of service agreement associated with the caller's account. Final Office Action, page 11, lines 11-13. Applicant submits that Szlam is equally deficient.

Szlam relates to an automated voice system for improving agent efficiency and improving service to parties placed on hold. Title. In one example Szlam describes that when an agent calls a party and is placed on hold by the party, the automated voice system allows the agent to press a key to indicate that the agent has been placed on hold. Col. 2, lines 37-40. Pressing the key causes the agent to be disconnected from the call with the party and connected to another call. Upon being disconnected from the call, a message is played on the telephone line to the party that placed the agent on hold indicating that the agent will return to assist the party if the party presses a presence key. Col. 2, lines 40-44. Apparently, Szlam's automated system reduces the on-hold time of the agent by allowing the agent who has been placed on-hold to be connected to other calls, thereby increasing the agent's efficiency. Nowhere, however, does Szlam describe or suggest making a determination to route the call to a human operator or agent based on information indicative of past misbehavior. Rather, Szlam teaches determining to route the call to an agent or human operator based on whether or not the human operator has been placed on hold by a party.

Accordingly, Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest "a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account" (emphasis added), as recited in claim 133.

For at least the forgoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 133, along with its dependent claims.

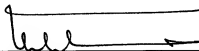
Independent claim 134 recites a system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The system includes, among other features, "a call router configured to bypass a sales pitch selection process and to route the service call to a human operator based on the identified information indicative of past misbehavior [wherein the information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account]" (emphasis added). As such, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 134, along with its dependent claims, for at least the reasons presented above with respect to claim 133.

Independent claim 135 recites a computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The computer program includes, among other features, "a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account" (emphasis added). As such, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 135, along with its dependent claims, for at least the reasons presented above with respect to claim 133.

Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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